HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.P.NO.4975 OF 2004

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Between:

Forum for a Better Hyderabad

Rep by its Member of Heritage Cell

Manatosh Mandal, age 69 years,

S/o late Debendranath Mandal,

6-3-1219/1/E, Umanagar, Begumpet,

Hyderabad – 16 and another.

.... Petitioner

AND

Government of A.P.

Rep by its Principal Secretary,

Municipal Adminsitration and Urban

Development of Andhra Pradesh,

Secretariat Buildings,

Hyderabad and 3 others

.....Respondents

::JUDGMENT::

Counsel for the Petitioners : Sri K.S.Murthy

Counsel for Respondent No. 1 : Government Pleader for

Municipal Administration.

Counsel for Respondent No. 2 : Sri S.V.Bhatt

Counsel for Respondent No. 4 : Sri Vilas V.Afzalpurkar

Dated 28..2..2006

Per Shri G.S.Singhvi, CJ

Since 1982, a lot of time of the Courts is consumed in dealing with petitions filed in the name of 'Public Interest Litigation'. A large number of such cases have served social purposes and objects but some have resulted in waste of valuable time of the Courts for which public pays. This petition filed by Forum for a Better Hyderabad and Sangamitra Malik for quashing G.O.Ms.No.36 MA dated 13.2.2004 issued by the State Government also falls in the latter category of cases. By projecting themselves as a public spirited organization and an individual interested in the protection of the heritage buildings of Hyderabad, the petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India for declaring as illegal the action of the Government of Andhra Pradesh to delete "Adil Alam Mansion, Nampally (Hyderabad)" from the list of heritage buildings.

In the affidavit filed by Sri Mantosh Mandal, who claims to be a member of the

Heritage Cell of petitioner No.1, it has been averred that the building in question was included in the list of heritage buildings, notified vide G.O.Ms.No.102, MA, dated 23-3-1998, but in complete disregard of the regulations framed by the Hyderabad Urban Development Authority (for short 'the HUDA') under Section 59 (1) of the Andhra Pradesh Urban Areas (Development) Act, 1975, which was approved by the State Government vide G.O.Ms.No.542, dated
14-12-1995 and the order passed by the High Court in Writ Petition No.20387 of 2001, the State Government has issued G.O.Ms.No.36, dated 13-2-2004 deleting the building in question from the list of heritage buildings. It has been further averred that when a portion of the building collapsed in September 2001 and the owner had sought permission to rebuild the same after demolishing the old one, Heritage Conservation Committee refused to allow demolition. After inspecting the site, the Heritage Conservation Committee rejected the proposal made for deleting the building from the list of heritage buildings and Vice-Chairman of HUDA approved the same. However, without any justification, the State Government issued the impugned G.O.Ms.No.36, dated 13-2-2004.

In the counter affidavit filed on behalf of the State Government by Sri S.Viswanatha Rao, Officer on Special Duty, Municipal Administration, Hyderabad Urban Development Authority, it has been averred that respondent No.4 Ms.K.E.Taraporewalla, daughter of Sri Edulji Hurmusji Taraporewalla (wrongly described in the writ petition as Mr.D.E. Taraporewalla) used to run Montessori House for Children and residence. The building collapsed on 25-9-2001. Thereupon, respondent No.4 made an application for deleting the same from the list of heritage buildings so as to enable her to construct a new building. The request made by respondent No.4 was considered in the light of the Zoning Regulations framed by HUDA in 1981; notice dated 9-12-2003 was published inviting objections and suggestions from the public for deleting "Adil Alam Mansion" from the list of heritage buildings. Notice was published in three newspapers viz., The Hindu, Andhra Jyothi and Munsif Daily. In all, 26 objections/suggestions were received by Hyderabad Urban Development Authority. Of these, six were from the institutions and remaining 20 were from the individuals who supported retention of the heritage character of the building. After careful examination of the proposal, the objections/suggestions made by the public and Heritage Conservation Committee and report of the Hyderabad Urban Development Authority, the Government decided

to delete Adil Alam Mansion from the list of heritage buildings. Consequently, G.O.Ms.No.36 MA dated 13.2.2004 was issued.

In her affidavit, respondent No.4, who has been wrongly described in the writ petition as Mr.D.E.Tarpurwala, has averred that a part of the building in question, which was being used by her for running a Montessori House for Children, collapsed due to heavy rains. Thereupon, a premises was taken on rent @ Rs.30,000/- per month at Khairtabad for running the Montessori School. Subsequently, the school was shifted to another rented building bearing No.11-5-411/1, Red Hills for a monthly rent of Rs.40,000/-. During this period, a number of representations were made to HUDA, Municipal Corporation, Hyderabad and State Government for deleting the building from the list of heritage buildings. In paragraphs 7 to 12 of her affidavit, respondent No.4 has averred as under:

> 7) While the Heritage Conservation Committee inspected the premises on 13-8-2002 clearly saw that the ground and the first floor of the building have suffered major collapse as large portions of 3 spacious halls in the ground and the first floor have collapsed and the rest of the structure is standing in a dangerous condition. HUDA and Heritage Conservation Committee, however, have been insisting that this respondent can only re-construct the demolished portion. It is respectfully submitted that as stated above, a House of Children is being run in the said premises and neither the police nor this respondent would be justified to risk the lives of the children and the staff, should anything untoward happen to them, after reconstruction of only the damaged portion. The risk involved in such reconstruction or repair would far-weigh the insistence of the petitioner as well as the Heritage Conservation Committee to retain the balance part of the building as it is. It is in these circumstances that this respondent had requested the Government to exempt/delete the said premises 'Adil Alam Mansion' from the notified list of heritage buildings.
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> 8) The said representation of this respondent was considered by the Government in the light of the reports of the HUDA as well as the Institutions and individuals who were invited to offer their objections or proposals to the said proposed action of the Government. Para 4 of the impugned G.O. itself records that HUDA had published notices in 3 daily newspapers of the proposed deletion of 'Adil Alam Mansion' from the list of Heritage Buildings. Out of 26 responses received, 6 were from the institutions and individuals objecting to the said proposal of deletion and the remaining 20 from individuals supporting the deletion. The Government has considered the said proposals and objections in the light of the reports of HUDA and has decided to delete the said building from the list of Heritage Buildings under the

impugned G.O. The contentions raised by the petitioner in the writ petition in para 7 that there was any mystery in the collapse of the building and further in paragraph 9 that there is any attempt of any Real Estate Dealer or this respondent in seeking deletion of the said building from the Heritage list is absolutely incorrect. The petitioners, therefore, alleged, as if that there is any design or plan behind the said deletion, which is factually incorrect and is devoid of appreciation of real situation.

9) The respondent respectfully submits that the very Regulation No.13 under which the petitioners claim violation of their alleged right is itself ultra vires of the Urban Development Authorities Act, 1972. It may be appreciated that the said Act contemplates constitution of Urban Arts Commission under Chapter 9 of the said Act. Sec.39 (2) (iii) provides that the restoration and conservation of archaeological and historical sites and sites of high scenic beauty, shall be one of the functions of the Urban Arts Commission which would be making appropriate recommendations to the Government and in view of Sec.39 (iv), the Government shall take appropriate decision and issue appropriate directions in the light of the recommendations of the said Arts Commission. Under Sec.58 (U), the Act provides that the Government may, after consultation with HUDA, by notification, make Rules, carrying out the purpose of this Act and so far as is relevant the powers and functions and the procedure to be followed by the Arts Commission. It would thus be apparent that under the A.P. Urban Areas Development Act, all matters relating to conservation etc., of the historical buildings, archeological sites or sites of high scenic beauty is only within the domain of such Arts Commissions. It would be indisputable that no such Commission has been constituted by the State Government under the said Act till date nor there are any Rules framed as envisaged under Sec.58 (U) of the Act. The petitioners claim the genesis of the Heritage Conservation Committee under G.O.Ms.No.542, MA, dated 14-12-1995 which is purported to have been issued by the government approving a new Regulation 13 to the Zoning Regulations. It may be appreciated that regulations made by the HUDA which include the zoning regulations, are traceable to the power of HUDA under Sec.59 of the Act which provides that

> “the Urban Development Authority may, with the previous approval of the Governments, make regulations consistent with the Act.”

10) As mentioned above, since the constitution of Urban Arts Commission under Sec.39 of the Act read with Rules to be made by the Government under Sec.58 (U) of the Act by itself shows that HUDA had no powers to make any regulation and even assuming that Regulation 13 under the Zoning Regulations as framed by the HUDA (under which the Heritage Conservation Committee is formed), the said Regulations are inconsistent with the scheme of the Act. Even otherwise, Sec.59 of the Act to which the said Regulation 13 is traced, does not provide for any such regulation to be made and as such, the said Regulation 13 issued under G.O.Ms.No.542, MA, dated 14-2-1995 is itself in conflict with the scheme of the Act as envisaged under Sec.38 read

with Sec.58 (U) of the Act. Any such regulation which is inconsistent with the act therefore, has to be declared as ultra vires the Act all actions of the Heritage Conservation Committee are ultra vires the Urban Areas Development Act, 1972. The contention of the petitioners, therefore, that the said Regulation is anyway violated on account of the impugned order of the Government is therefore equally unsustainable and upholding the claim of the petitioners by this Honourable Court would amount to upholding an unconstitutional and ultra vires regulation which is impermissible and the very inclusion of the deponent's building in the said list of Heritage buildings is ultra vires. Even otherwise, this respondent respectfully submits that assuming the said Regulation under G.O.Ms.No.542 is valid, it is evident that the said Regulation is issued specifically stating that there is no financial commitment to Government or HUDA for all acts under the said Regulation. It is not in dispute that neither the Government nor the HUDA have spent a pie on the maintenance of this respondent's building and it is the respondent alone who has been looking after the upkeep and maintenance of the said building. It has therefore not been for the State or the HUDA or the Heritage Conservation Committee to put restrictions on the user of the said building by its owner, when no duty is being discharged by them towards the said building.

11) Even assuming that the said G.O. and the Regulation is valid under Sec.13 (4) of the said Regulation, the power to alter, relax, modify the regulation undoubtedly vests with the Government and the Government admittedly has consulted the Heritage Conservation Committee as well as the HUDA apart from inviting objections and suggestions from members of the public. The said notification deleting this respondent's building from the list of heritage buildings is, therefore, in compliance with the said Regulation 13 (4) of the Zoning Regulations and is also supported by a specific reason attributed to the unfortunate collapse of the building as early as on 25-9-2001. The Government's decision which is challenged in the writ petition has therefore been taken and communicated almost after 3 years and after exhausting the personal inspection, particularly with reference to structural stability of the building and the said decision is in conformity with the reality of the situation that a House of Children is being run and is proposed to be run in the constructed building. Allowing the House of Children to be run in a repaired building is fraught with serious risk and constant nightmare of collapse of the building and as such the said decision of the Government impugned herein is rational and sustainable even under the Regulation 13 itself.

12) The petitioners have conveniently omitted to bring to the notice of this Honourable Court that parts of the same building have been purchased by other persons and they have already demolished such parts and reconstructed individual buildings in that place. The restriction in respect of heritage buildings are being enforced against this respondent's portion only

disregarding that the adjacent parts of the same building have been already demolished and reconstructed by the respective owners. The present writ petition, therefore, is in the nature of an obstructionist attitude on the part of the petitioner and amounts to unreasonably restricting the right of this respondent to use, enjoy and possess her property in accordance with law. The writ petition, therefore, deserves to be dismissed with costs and the ex parte interim order dated 17-3-2004 in W.P.M.P.No.6505 of 2004 in W.P.No.4975 of 2004 is liable to be vacated."

The petitioners have filed rejoinder affidavit reiterating their prayer for quashing G.O.Ms.No.36, dated 13-2-2004.

We have heard learned counsel for the parties and carefully perused the affidavit filed in support of the petition; counter-affidavits filed on behalf of respondent No.1 and by respondent No.4 as also the rejoinder affidavits filed by the petitioner. The affidavit filed in support of the writ petition is conspicuously silent about the running of Montessori School by respondent No.4. The rejoinder affidavit is also evasive on this issue. In our opinion, the petitioners' silence on this issue militates against their credibility of public spirited persons.

De hors the above observations, we have considered the petitioners' challenge to G.O.Ms.No.36, MA, dated 13-2-2004. On the face of it, their plea that the decision taken by the State Government is contrary to the scheme of Regulation 13 sounds attractive, but, on a closer scrutiny, we do not find any merit in it.

Clauses 2 and 3 of Regulation 13 of the Hyderabad Urban Development Authority Zoning Regulations, 1981 (for short 'the 1981Regulations'), which have bearing on the decision of this petition, read as under:

"**Regulation No.13**

Conservation of Listed Buildings, Areas, Artefacts, Structures and Precincts of Historical and /or Asthetical and/or Architectural and / or cultural value (Heritage Buildings and Heritage Precincts) Including Rock formations:

1. …

2. Restriction on Development/Redevelopment/Repairs, etc.:

   i. No development or redevelopment or engineering operation or additions, alterations, repairs,

renovation including the painting of buildings, replacement of special features or demolition of the whole or any part thereof or plastering of said Heritage buildings or Heritage Precincts shall be allowed except with the prior written permission of the Vice-Chairman, Hyderabad Urban Development Authority shall act on the advice of / in consultation with the Heritage Conservation Committee to be appointed by Government (hereafter called "the said Heritage Conservation Committee):

Provided that in exceptional cases, for reasons to be recorded in writing, the Vice-Chairman, Hyderabad Urban Development Authority may overrule the recommendation of the Heritage Conservation Committee:

Provided further that the power to overrule the recommendations of the Heritage Conservation Committee shall not be delegated by the Vice-Chairman, Hyderabad Urban Development Authority to any other officer.

ii. In relation to religious buildings in the said list, the changes, repairs, additions, alterations and renovations required on religious grounds mentioned in sacred texts, or as a part of holy practices laid down in religious codes shall be treated as permissible, subject to their being accordance and consonance with the original structure and architecture, designs, aesthetics and other special features thereof. Provided that before arriving at his decision, the Vice-Chairman, Hyderabad Urban Development Authority shall take into consideration the recommendations of the Heritage Conservation Committee.

3. Preparation of list of Heritage Buildings and Heritage Precincts:

The said list of buildings, artifacts, structures and precincts of historical, and/or aesthetical, and/or architectural and/or cultural value including rock formations to which this regulation applies shall not form part of the Regulation for the purpose of Section 59 of the Andhra Pradesh Urban Areas (Development) Act, 1975. Modifications to the list shall not amount to modification to Zoning Regulations. This list may be supplemented, altered, deleted or modified from time to time may be supplemented, altered, deleted or modified from time to time by Government on receipt of proposals from the Vice-Chairman, Hyderabad Urban Development Authority or from the said Heritage Conservation Committee, or by Government suo motu, provided that before the list is supplemented,

altered, deleted or modified, objections and suggestions from the public be invited and duly considered by the Vice-Chairman, Hyderabad Urban Development Authority and/or by Government.

…"

An analysis of the above reproduced provisions shows that no development or re-development or engineering operation or additions, alteration, repairs, renovation etc., can be carried out in a building declared as "Heritage Building" or precinct declared as "Heritage Precinct" without prior written permission of the Vice-Chairman of HUDA, who is required to act on the advice of / in consultation with the Heritage Conservation Committee. Regulation 13 (3) envisages preparation of the list of heritage buildings and heritage precincts. It also contains a provision that the list of heritage building may be supplemented or altered or deleted or modified by the government on the proposal of the Vice-Chairman, HUDA or the Heritage Conservation Committee or suo motu. However, this power is to be exercised after inviting objections and suggestions from the public and consideration thereof by the Vice-Chairman, HUDA or the State Government. It is, thus, clear that the State Government can suo motu take a decision to delete any particular building from the list of heritage buildings provided that objections and suggestions are received from the public and are considered by the concerned authority.

The facts of the present case show that before issuing the impugned G.O.Ms.No.36 for deleting "Adil Alam Mansion" from the list of heritage buildings, the State Government had taken into consideration the report of the Vice-Chairman, HUDA and objections and suggestions made by the public and the Heritage Conservation Committee and then took the final decision. This is evident from paragraphs 5 to 7 of the impugned G.O.Ms.No.36, which are reproduced below:

"5. WHEREAS, the Vice-Chairman, Hyderabad Urban Development Authority has reported vide letter No.10482/Plg/HCC/H/01, dated 09-12-2003 that Hyderabad Urban Development Authority have published a notice for deletion of Adil Alam Mansion from the list of Heritage Buildings on 18-10-2003 i.e., in 3 daily news papers viz., The Hindu, Andhra Jyothi and Munsif Daily inviting suggestions and objections from the public within a period of 15 days of publication of the notice or 10th November, 2003 which ever is earlier. The total number of objections and suggestions received by Hyderabad Urban Development Authority is 26. of the total 26 responses, six are received from institutions and individuals objecting to the proposal to delete

the Heritage Building from the list. The remaining 20 are from individuals supporting deletion. The Hyderabad Urban Development Authority has furnished the copies of objections/suggestions received and minutes of the Heritage Conservation Committee to the Government on the proposal of the deletion of Adil Alam Mansion.

6) Government after careful examination of the proposal and keeping in view the objections and suggestions made by the public and Heritage Conservation Committee and report of Hyderabad Urban Development Authority decided to delete the Adil Alam Mansion from the list of Heritage Buildings published in G.O.Ms.No.102 M.A., dated 23-3-1998.

7) Therefore, in exercise of the powers conferred under Regulation 13 (3) of Hyderabad Urban Development Authority Zoning Regulations, 1981 made under sub-section 1 of section 59 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (Act-1 of 1975), the Government hereby delete the Adil Alam Mansion from the list of Heritage Buildings notified vide G.O.Ms.No.102, M.A., dated 23-3-1998."

The petitioners have neither averred nor any material has been placed before the Court to show that the aforementioned decision was taken by the State Government without complying with Clause (3) of Regulation 18 of the 1981 Regulations. It is also not their case that action of the Government to delete the name of "Adil Alam Mansion" from the list of heritage buildings is actuated by ulterior motive or malice animus of any particular officer. Therefore, we do not find any valid ground or justification to nullify G.O.Ms.No.36, dated 13-2-2004.

The order passed in Writ Petition No.20387 of 2001, on which reliance has been placed by the petitioners, does not contemplate a total ban on deleting any particular building from the list of heritage buildings. In that case, the Court had merely observed that the State is bound to preserve heritage buildings and heritage precincts and before making any modification or alteration in the list of such buildings or precincts, the State Government must follow the mandatory provisions of Regulation 13 of the 1981 Regulations. In the present case, the Government has followed the mandatory provisions contained in Regulation 13(3). In the first instance, notice for deleting "Adil Alam Mansion" from the list of heritage buildings was issued. The same was published in three daily newspapers, objections and suggestions received from the public were considered and then final decision was

taken keeping in view the fact that a portion of the building had collapsed due to rains. It is, therefore, not possible to find any fault with the decision of the Government.

For the reasons mentioned above, the writ petition is dismissed.

G.S.SINGHVI, CJ

Dt.28.2.2006

G.BHAVANI PRASAD, J

Msv / svs